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IN THE

Supreme Court of the United States

October Term, 1942.

No. 67.

WADE GARRETT,

Petitioner,

v.

MOORE-McCORMACK COMPANY, INC., and AMERICAN SCANTIC LINE,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

RESPONDENTS' REPLY BRIEF.

ROWLAND C. EVANS, JR.,
Counsel for Respondents.

International, 236 Chestnut St., Philadelphia

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

RESPONDENT'S REPLY BRIEF.

Your Honorable Court is respectfully requested to give consideration to this respondents' reply brief because two questions were raised at the argument which was heard on November 12th, 1942, and which questions were not anticipated by counsel for the respondents and thus were answered without the consideration and study they deserved.

First:—the suggestion was made at the argument that the fairness of the settlement must be established as a basis to the validity of a release. So far as the writer has been able to find, no case of your Honorable Court has so held. The Circuit Court of Appeals has held to the contrary: see

Harmon v. United States, 59 Fed. (2d) 372, where the Circuit Court, Fifth Circuit, pointed out that even though the seaman had not acted wisely in making his settlement, nevertheless he was bound by his act. This and other authorities are discussed more fully at page 24 of respondents' brief.

The question of what is "fair" embraces many elements in a claim of this kind. It is doubtful if any two minds could agree to the penny as to what amount paid as consideration for a settlement is "fair." Liability and extent of injury must be carefully weighed. Certainly if the fairness of the settlement is subject to review, a considerable restraint on amicable settlements of claims of this kind must result.

It is here submitted that if the alleged Admiralty rule as to the burden of proof and/or fairness of a release be impressed upon common law Courts, in cases where a seaman elects to bring suit after having settled his claim and accepted the benefits of his settlement, the question of the validity of his release would necessarily have to be submitted to a jury on any unsupported statement of the suitor. It is suggested that this would be an invitation to seamen to first settle their claims for what they could get and then institute suit in a common law Court with the hope that a jury would disregard the release.

Second:—it was also suggested at the argument that the *"Arizona"*, 298 U. S. 110, held that where a seaman brings his action in a State Court he not only brings with him all of the benefits of Statutes of the United States as provided in the Jones Act but also any favorable Judge-made doctrines of the Admiralty law. It is here pointed out that in the *"Arizona"* case the injury arose from a de-

fective appliance on the vessel. That being so, it may fairly be reasoned that the defective appliance placed the suitor in the same position as a railroad employee would be if his injury resulted from a defective railroad appliance. By such reasoning the "assumption of risk" doctrine would not be a defense under the Jones Act any more than it would be under the non-statutory Admiralty law.

The holding of the "*Arizona*" case was therefore not dependent upon the application of Judge-made Admiralty law in a State Court. The remedy and all possible defenses to it were covered by the Railroad Employers Liability Act as brought into the Admiralty law by the Jones Act.

The opinion in the "*Arizona*" case does not indicate that the question of the "saving clause" of the Judiciary Act was raised or considered.

Finally, it is submitted that in the "*Arizona*" case the question dealt with a substantive Admiralty right and not as in the case at bar with the question of the method or procedure of proving a fact; to wit, the validity of a release.

Respectfully submitted,

ROWLAND C. EVANS, JR.,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 67.—October Term, 1942.

Wade Garrett, Petitioner,
vs.
Moore-McCormack Company, Inc., and American Scantic Line.

On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

[December 14, 1942.]

Mr. Justice Black delivered the opinion of the Court.

The petitioner was injured while working as a seaman for respondent on a vessel traveling between the United States and European ports and spent a number of months in hospitals in Gdynia, Poland, and in the United States. He brought this suit in a Pennsylvania State Court for damages pursuant to Section 33 of the Merchant Marine (Jones) Act,[1] and for maintenance and cure.[2] The Pennsylvania courts, as this litigation evidences, are apparently quite willing to make themselves available for the enforcement of these rights.

Petitioner attributed his condition to a blow by a hatch cover which allegedly fell on him through respondent's negligence. Respondent joined issue generally, contested the extent of any injuries received and further contended that if serious injuries did exist they were caused by a fight in Copenhagen or by accidents prior to the voyage. As an additional defense the respondent also alleged that for a consideration of $100 petitioner had executed a full release. Denying that he had any knowledge of having signed such an instrument the petitioner asserted that if his name appeared on it, his signature was obtained through fraud and misrepresentation, and without "legal, binding and valid consideration."

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[1] 46 U. S. C. 688.

[2] The right of a seaman to recover damages for negligent injury arises under the Jones Act and the right to maintenance and cure irrespective of negligence arises under the law of admiralty. These rights are independent and cumulative. Pacific Co. *v.* Peterson, 278 U. S. 130, 138. For a general discussion of maintenance and cure see The Osceola, 189 U. S. 158; Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 371; Calmar S. S. Corp. *v.* Taylor, 303 U. S. 525, 527.

The petitioner did execute a release for $100 several days after his return to this country. His testimony was that his discussion with respondent's claim agent took place while he was under the influence of drugs taken to allay the pain of his injury, that he was threatened with imprisonment if he did not sign as directed, and that he considered the $100 a payment of wages.[3] The respondent's evidence was that the $100 was paid not for wages but to settle all claims growing out of the petitioner's injuries, that the petitioner had not appeared to be under the influence of drugs, and that no threats of any kind were made.

Upon this and much other evidence relating to the cause and extent of the injuries, the jury rendered a verdict for the petitioner for $3000 under the Jones Act, and $1000 for maintenance and cure.

Respondent made a motion for a new trial and judgment non obstante verdicto which under the Pennsylvania practice was submitted to the trial court en banc.[4] That court gave judgment to the defendant non obstante verdicto, not upon an appraisal of disputed questions of fact concerning the accident, but because of a conclusion that petitioner had failed to sustain the burden of proof required under Pennsylvania law to invalidate the release. It conceded that "in Admiralty cases, the responsibility is on the defendant to sustain a release rather than on a plaintiff to overcome it", but concluded that since petitioner had chosen to bring his action in a state rather than in an admiralty court, his case must be governed by local, rather than admiralty principles. Under the Pennsylvania rule one who attacks the validity of a written release has the burden of sustaining his allegation by "clear, precise, and indubitable" evidence; meaning evidence "that is not only found to be credible but of such weight and directness as to make out the facts alleged beyond a reasonable doubt." Witnesses who testify against the release must not only be credible but "distinctly remember the facts to which they testify and

[3] There were two elements of the wage dispute: (a) whether wages should be computed at $50.00 or $72.50 a month; (b) whether since petitioner was left in a hospital in Poland and could not return with his ship, he should have been paid wages until he actually arrived in his home port. He was paid only up to the time he left the vessel. There is clear authority to support a claim for wages to the end of the voyage for which petitioner had been signed. The Osceola, *supra*, 175.

[4] In Pennsylvania the trial judge does not pass upon such motions alone; instead they are heard and decided by three judges of the court sitting en banc. Purdon, Penn. Stat. Ann., Vol. 12, Par. 680.

narrate the details exactly." The court held that since the petitioner had not sustained this burden of proof, the trial judge should have withdrawn the case from the jury.

The Supreme Court of Pennsylvania took a somewhat different view. It held that in an action of this sort the Pennsylvania court was obligated "to apply the federal law creating the right of action in the same sense in which it would have been applied in the federal courts." However, it affirmed the judgment in the belief that the rule as to burden of proof on releases does not affect the substantive rights of the parties, but is merely procedural, and is therefore controlled by state law.

I. Respondent's argument that the Pennsylvania court should have applied state rather than admiralty law in measuring the rights of parties cannot be sustained.

We do not have in this case an effort of the state court to enforce rights claimed to be rooted in state law. The petitioner's suit rested on asserted rights granted by federal law and the state courts so treated it. Jurisdiction of the state court to try this case rests solely upon Sec. 33 of the Jones Act and upon statutes traceable to the Judiciary Act of 1789 which "in all civil causes of admiralty and maritime jurisdiction" saves to suitors "the right of a common-law remedy where the common law is competent to give it."[5] These statutes authorize Pennsylvania courts to try cases coming within the defined category.[6] Whether Pennsylvania was required by the acts to make its courts available for those federal remedies, or whether it could create its own remedy as to maintenance and cure based on local law, we need not decide;[7] for having voluntarily opened its courts to petitioner, the questions are whether Pennsylvania was thereupon required to give to petitioner the full benefit of federal law and if so whether it failed to afford that benefit.

There is no dearth of example of the obligation on law courts which attempt to enforce substantive rights arising from admiralty law to do so in a manner conforming to admiralty practice. Contributory negligence is not a barrier to a proceeding in admiralty or under the Jones Act, and the state courts are required to

[5] 28 U. S. C. sec. 371.

[6] Engel v. Davenport, 271 U. S. 33, 37, 38 (Jones Act); The Belfast, 7 Wall. 624, 644; Garcia Y. Leon v. Galceran, 11 Wall. 185, 187-188; Panama Railroad v. Vasquez, 271 U. S. 557, 560-561. The last three cases involve non-statutory actions.

[7] The Hamilton, 207 U. S. 398, 404; Just v. Chambers, 312 U. S. 383, 391.

apply this rule in Jones Act actions. *Beadle* v. *Spencer*, 298 U. S. 124. Similarly state courts may not apply their doctrines of assumption of risk in actions arising under the Act. *The Arizona*, 298 U. S. 110; *Socony-Vacuum Co.* v. *Smith*, 305 U. S. 424. State courts, whether or not applying the Jones Act to actions arising from maritime torts, have usually attempted, although not always with complete success, to apply admiralty principles.[8] The federal courts when treating maritime torts in actions at law rather than as suits in admiralty have also sought to preserve admiralty principles whenever consonant with the necessities of common law procedure.[9]

This Court has specifically held that the Jones Act is to have a uniform application throughout the country unaffected by "local views of common law rules." *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 392. The Act is based upon and incorporates by reference the Federal Employers' Liability Act, which also requires uniform interpretation. *Second Employers Liability Cases*, 223 U. S. 1, 55 *et seq.* This uniformity requirement extends to the type of proof necessary for judgment. *New Orleans & N. E. R. Co.* v. *Harris*, 247 U. S. 367.

In many other cases this Court has declared the necessary dominance of admiralty principles in actions in vindication of rights arising from admiralty law.[10] *Belden* v. *Chase*, 150 U. S. 674, an 1893 decision which respondent relies upon as establishing a contrary rule, has never been thus considered in any of the later cases cited.

It must be remembered that the state courts have concurrent jurisdiction with the federal courts to try actions either under the Merchant Marine Act or in personam such as maintenance and cure. The source of the governing law applied is in the national, not the state, governments.[11] If by its practice the state court

[8] Colonna Shipyard v. Bland, 150 Va. 349, 358 (contributory negligence); Paulsen v. McDuffie, 4 Cal. 2d 111 (assumption of risk); Lieflander v. States S. S. Co., 149 Ore. 605 (burden of proof).

[9] Berwind-White Coal Mining Co. v. Eastern Steamship Corp., 228 F. 726; Port of New York Stevedoring Corp. v. Castagna, 280 F. 618.

[10] So. Pac. Co. v. Jensen, 244 U. S. 205; Chelentis v. Luckenbach, 247 U. S. 372; Knickerbocker Ice Co., 253 U. S. 149, 159; Carlisle Packing Co. v. Sandanger, 259 U. S. 255, 259; Messel v. Foundation Co., 274 U. S. 427, 434; and see Schuede v. Zenith S. S. Co., 216 F. 566. Disagreement over the Constitutional issues of the cases in the Jensen line has not extended to this principle. Cf. The Lottawanna, 21 Wall. 558, 575; Detroit Trust Co. v. The Barlum, 293 U. S. 21, 43.

[11] The Steamer St. Lawrence, 1 Black 522, 526-527.

were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates. Not so long ago we sought to achieve this result with respect to enforcement in the federal courts of rights created or governed by state law.[12] And admiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State.[13] So here, in trying this case the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected. Whether it did so, raises a federal question reviewable here under § 237(b) of the Judicial Code, 28 U. S. C. § 344(b).[14]

II. A seaman in admiralty who attacks a release has no such burden imposed upon him as that to which the Pennsylvania rule subjects him. Our historic national policy, both legislative and judicial, points the other way. Congress has generally sought to safeguard seamen's rights. The first Congress, on July 20, 1790, passed a protective act for seamen in the merchant marine service, safeguarding wage contracts, providing summary remedies for their breach, and requiring shipowners to keep on board fresh medicines in condition for use. 1 Stat. 131. The fifth Congress, July 16, 1798, 1 Stat. 605, originated our present system of marine hospitals for disabled seamen. The language of Justice Story, sitting on Circuit in 1823, described the solicitude with which admiralty has traditionally viewed seamen's contracts:

"They are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and *cestuis que* trust with their trustees. . . . If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side, which are not

[12] Erie R. R. v. Tompkins, 304 U. S. 64.

[13] Western Fuel Co. v. Garcia, 257 U. S. 242. Cf. The Hamilton, *supra*.

[14] See Claflin v. Houseman, 93 U. S. 130, 136-42; cf. Standard Oil Co. v. Johnson, 316 U. S. 481, 483.

compensated by extraordinary benefits on the other, the judicial interpretation of the transaction is, that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that *pro tanto* the bargain ought to be set aside as inequitable. . . . . And on every occasion the court expects to be satisfied, that the compensation for every material alteration is entirely adequate to the diminution of right or privilege on the part of the seamen." *Harden* v. *Gordon*, Fed. Cas. 6047 at pp. 480, 485,

In keeping with this policy, Congress has itself acted concerning seamen's releases in respect to wages by providing that a release for wages must be signed by a seaman in the presence of a shipping commissioner, and that even then "any court having jurisdiction may on good cause shown set aside such release and take such action as justice may require."[15] General Congressional policy is further shown in the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. §§ 915, 916, in which all releases not made under the express terms of the Act are declared invalid.

The analogy suggested by Justice Story in the paragraph quoted above between seamen's contracts and those of fiduciaries and beneficiaries remains, under the prevailing rule treating seamen as wards of admiralty, a close one. Whether the transaction under consideration is a contract, sale, or gift between guardian and ward or between trustee and cestui, the burden of proving its validity is on the fiduciary. He must affirmatively show that no advantage has been taken; and his burden is particularly heavy where there has been inadequacy of consideration.[16]

The wardship theory has, as was recognized by the courts below, marked consequence on the treatment given seamen's releases. Such releases are subject to careful scrutiny. "One who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman." *Harmon* v. *United States*, 59 F. 2d 372, 373. We hold, therefore, that the burden is upon one who sets up a seaman's release to

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[15] 46 U. S. C. § 597. See Pacific Mail Steamship Co. v. Lucas, 258 U. S. 266; *Ibid.*, 264 F. 938.

[16] Michoud v. Girod, 4 How. 503, 556; cf. Magruder v. Drury, 235 U. S. 106, 120; Thorn Wire Co. v. Washburn & Moen Co., 159 U. S. 423, 443; Klamath Indians v. United States, 296 U. S. 244, 254; and United States v. Dunn, 268 U. S. 121, 131. The admiralty rule is well within the bounds put on these other relationships, since many trustee-cestui or guardian and ward contracts are voidable on the election of the beneficiary. See Wade v. Pulsifer, 54 Vt. 45, 62; Hatch v. Hatch, 9 Ves. 291 (1804); and cf. Madden, Domestic Relations, Ch. 12 and 3 Bogert, Trusts, § 493.

show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.[17]

This general admiralty rule applies not only to actions for maintenance and cure but also to actions under Section 33 of the Merchant Marine Act. That law is to be liberally construed to carry out its full purpose, which was to enlarge admiralty's protection to its wards. *Warner* v. *Goltra*, 293 U. S. 155, 156, 162; *The Arizona*, 298 U. S. 110, 123. Being an integral part of the maritime law, rights fashioned by it are to be implemented by admiralty rules not inconsistent with the Act. *Socony Vacuum Co.* v. *Smith*, 305 U. S. 424, 430.

III. The Pennsylvania Supreme Court has concluded that in solving problems of procedural, as distinguished from substantive, law, the law court may apply its own doctrine; and that the locus of burden of proof presents a procedural rather than a substantive question.

Much of what we have said above concerning the necessity of preserving all of the substantial admiralty rights in an action at law is incompatible with the conclusion of the court below. The right of the petitioner to be free from the burden of proof imposed by the Pennsylvania local rule inhered in his cause of action. Deeply rooted in admiralty as that right is, it was a part of the very substance of his claim and cannot be considered a mere incident of a form of procedure. *Central Vermont Ry.* v. *White*, 238 U. S. 507, 511, 512; *Cities Service Co.* v. *Dunlap*, 308 U. S. 208, 212; and cf. *Lehigh Valley R. Co.* v. *Cornell Steamboat Co.*, 218 U. S. 264, 270. Pennsylvania having opened its courts to petitioner to enforce federally created rights, the petitioner was entitled to the benefit of the full scope of these rights. The cause is reversed for action not inconsistent with this opinion.

Reversed.

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[17] See the Harmon case, *supra*, and Bonici v. Standard Oil Co. of New Jersey, 103 F. 2d 437; Sitchon v. American Export Lines, 113 F. 2d 830; Hume v. Moore-McCormack Lines, 121 F. 2d 336. For somewhat comparable cases involving releases for personal injuries arising from non maritime torts, see Union Pacific Railway Co. v. Harris, 158 U. S. 326; Chesapeake and Ohio Railway Co. v. Howard, 178 U. S. 153, 167; Texas and Pacific Railway Co. v. Dashiell, 198 U. S. 521. Cf. Duncan v. Thompson, 315 U. S. 1.